PLAINTIFF'S EXHIBIT 12A

TRADEMARK AND COPYRIGHT LICENSE AGREEMENT

The parties to this agreement are NINTENDO COMPANY, LTD., a company incorporated in Japan and having its registered office at 60 Fukuine Kamitakamatsu-cho, Higashiyama-ku, Kyoto, Japan, and NINTENDO OF AMERICA, INC., a New York corporation, with its headquarters at 18340 Southcenter Parkway, Seattle, Washington 98188 (hereinafter collectively referred to as "Licensor") and COLECO INDUSTRIES, INC., a Connecticut corporation having its registered office at 945 Asylum Avenue, Hartford, Connecticut, 06105 (hereinafter referred to as "Licensee").

WHEREAS, Licensor is the owner of the trademark "DONKEY KONG" and the audio visual game known as "DONKEY KONG", said audio visual work having been copyrighted in the United States under Registration No. PA115-040 with an effective date of July 31, 1981, and said trademark and copyrighted work hereafter referred to in this Agreement as the self-contained "Donkey Kong Electronic Table-top Game"; and

WHEREAS, Licensor desires to grant a limited and exclusive license to use said trademark and copyrighted work to Licensee under the terms and conditions set forth

EXHIBIT 4 DATE 8-30-82
WITNESS
Sheila M. Mecartea 682-1427

herein;

NOW, THEREFORE, in consideration of the convenants of this Agreement, including the advance non-refundable royalty payment described herein, the parties agree as follows:

1. GRANT OF LICENSE. Licensor hereby grants to Licensee a license to develop, manufacture and distribute in the territory hereafter described the Donkey Kong Electronic Table-top Game (for home use only).

2. DEVELOPMENT WORK. Licensee shall be solely responsible for and bear the entire cost of development of the Donkey Kong Electronic Table-top Game for the use and in the form described in Section 1 of this Agreement. Licensor shall not be obligated to assist or collaborate with Licensee in the development of the Donkey Kong Electronic Table-top Game and it shall not be obligated to disclose, transfer or otherwise provide Licensee with any konw-how, data or information concerning the Donkey Kong Electronic Table-top Game.

3. LIMITATION OF LICENSE.

(a) The license granted herein does not extend to the development, manufacture or distribution of the

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Donkey Kong Electronic Table-top Game for uses other than as described in Section 1 of this Agreement, including, but not limited to; (i) use of the game in a home video game system; (ii) its use in a personal or home computer system; (iii) its use in an electronic game-combination unit products each comprising, in combination, an electronic game having a liquid crystal display and a digital quartz time piece up to that of about two times as large in size and thickness as the "GAME & WATCH" (wide screen) presently marketed worldwide by Licensor; and (iv) its use in coin-operated video amusement games. Licensor agrees not to market the product described (iii) above in the USA and Canada before June 30, 1982.

(b) The license granted herein is restricted to Licensee's development, manufacture and sale of a specific and existing audio-visual work (i.e., the audio-visual work known as "Donkey Kong" and copyrighted in the United States under registration number PA115-040 with an effective date of July 31, 1981 and referred to herein as the Donkey Kong Electronic Table-Top Game). Nothing contained herein shall authorize Licensee to develop, manufacture or sell any derivative audio-visual work of the Donkey Kong Electronic Table-Top Game or use the

Donkey Kong trademark except in connection with such Donkey Kong Electronic Table-Top Game. Licensor reserves to itself the right to develop, manufacture, sell and license all derivative audio-visual works of the Donkey Kong Electronic Table-Top Game. Licensor agrees that, in case Licensor has developed a derivative audio-visual work exercising the right reserved to itself hereunder, Licensor shall offer Licensee the first priority to negotiate with Licensor for a new license with regard to said derivative audio-visual work. If, however, the relevant negotiation has failed to reach an agreement within thirty (30) days from the date of first sale or distribution of said work in the form of a coin-operated video amusement game in the United States, or if Licensee has waived said priority, Licensor may grant to a third party a license with respect to said derivative audio-visual work.

4. EXCLUSIVE LICENSE/TERRITORY. The license granted to Licensee is exclusive during the term of this Agreement and shall extend to the manufacture and sale of the Donkey Kong Electronic Table-top Game (in the form and for the use described in Section 1 of this Agreement) in the United States of America and all of the countries of the world, except Japan. Nothing contained in this Agreement shall prevent Licensor from hereafter developing,

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manufacturing and selling within Japan the Donkey Kong Electronic Table-top Game in cartridge or cassette form or other format for use in a home video game system.

5. ASSIGNMENT AND SUBLICENSING. Licensee is not authorized to sell, assign, delegate, sublicense or otherwise transfer the license granted herein without the prior written consent of Licensor.

6. ROYALTIES. All of the royalties payable hereunder have been allocated between Nintendo Company, Ltd., and Nintendo of America, Inc., as follows: Nintendo Company, Ltd., 80%, Nintendo of America, Inc., 20%.

(a) Licensee shall pay Licensor $100,000.00 (U.S.), said amount representing an advance non-refundable royalty payment, in the following two installments:

(i) Upon execution of this Agreement, $30,000.00 (U.S.) and

(ii) by March 31, 1983, the balance, if any, between $70,000.00 (U.S.) and accumulated amount of Licensee's running royalty payments based on $1.00 (U.S.) for each Donkey Kong Electronic Table-top Game sold by Licensee within the first year (from February 1, 1982 through January 31, 1983).

In addition, Licensee shall pay Licensor the sum of $1.00

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(U.S.) per Donkey Kong Electronic Table-top Game hereafter sold by Licensee, with such payments first credited against the advance non-refundable royalty payment. Eighty percent (80%) of all payments shall be payable to NINTENDO COMPANY, LTD. at its office at 60 Fukuine Kamitakamatsu-cho, Higashiyama-ku, Kyoto, Japan and twenty percent (20%) thereof shall be payable to NINTENDO OF AMERICA, INC. at its office at 18340 Southcenter Parkway, Seattle, Washington 98188. Licensee shall timely withhold and pay federal income tax payable by NINTENDO COMPANY, LTD. under the U.S.-Japan Income Tax Treaty upon royalties payable by Licensee to NINTENDO COMPANY, LTD. hereunder. Licensee shall provide NINTENDO COMPANY, LTD. with copies of IRS Form 1042 and such other documents as may be necessary to evidence withholding and payment at source of such tax. All payments due Licensor under this Agreement shall be paid in U.S. Dollars and shall be remitted by bank draft or check sent registered or certified airmail to Licensor.

(b) Licensee, within thirty (30) days after and as of the end of each calendar quarter of each year during the term of this Agreement, commencing as of the effective date, shall furnish to Licensor a royalty report specifying: (1) the number of sales of the Donkey Kong Electronic

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Table-top Game during the preceding calendar quarter; (2) the amount or amounts due Licensor; (3) the taxes withheld and paid on behalf of Licensor pursuant to this Section. Each report so submitted shall be accompanied by the royalty payment due Licensor.

(c) Licensor shall retain, at its principal place of business for a period of two years after making a royalty report, all the records, files and books of account prepared in the normal course of business, which contain data reasonably required for the computation and verification of the amounts to be paid and the information to be given in such report. Licensee shall permit Licensor and its duly authorized representatives and agents to inspect at all reasonable times and at Licensor's expense, all such records, files and books of account and to take extracts therefrom or make copies thereof for the purpose of verifying the correctness of the royalty payments. Licensee shall give Licensor and its duly authorized representatives and agents such other information as may be necessary and proper to enable the amount of payments payable hereunder to be accurately ascertained.

7. QUALITY OF GOODS/INSPECTION. With respect to the product which are sold by Licensee using any of Licensor

trademarks, Licensee agrees that the quality of such products shall be of the same high level as that of Licensor's products which are identified by the same mark. To enable Licensor to determine the quality of Licensee Licensed Goods, Licensee shall submit a sample of each such product to Licensor for approval prior to sale of the product. In the event that Licensor determines that any of such Licensed Goods of Licensee are of a quality lower than the quality of the approved sample and notifies Licensee of same and Licensee fails to correct the deficiency and raise the quality of such product within thirty (30) days after being so notified, Licensor shall have the right to terminate the agreement with respect to those products of deficient quality.

8. CONFIDENTIALITY. Licensee agrees that it will keep all technical data which Licensor supplies to it and which relates to the development of the Donkey Kong Electronic Table-top Game for the use and purpose described herein strictly confidential and will not without Licensor's consent communicate the same except to its employees and only then to such an extent as may be necessary to enable the proper manufacture and sale of such games to be carried on in accordance with the provisions of this Agreement.

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9. LICENSEE'S ELECTION NOT TO MANUFACTURE. If Licensee at any time after the execution of this Agreement and prior to sales of the Donkey Kong Electronic Table-top Game to third parties shall elect not to manufacture the game, which election shall be in writing and delivered to Licensor, then Licensor shall be entitled to retain the advance non-refundable royalty payment ($100,000) as consideration for its grant of the exclusive license contained herein, and this Agreement shall thereupon terminate.

10. DISPLAY AND MARKING OF TRADEMARK AND COPYRIGHT. Whenever Licensee uses the trademark "Donkey Kong" or the Donkey Kong copyrighted material in connection with the manufacture and sale of the Donkey Kong Electronic Table-top Game (including, but not limited to, video display, advertising material, packaging material, etc.), Licensee shall clearly indicate (a) Licensor's exclusive ownership of the trademark and copyrighted materials; and (b) the fact that the Donkey Kong Electronic Table-top Game is manufactured under an exclusive license from Licensor. This shall be accomplished by placing the letters "Tm" immediately following the words "Donkey Kong" and by use of the copyright notice "Donkey Kong (c)1981 Nintendo of America, Inc.-Authorized Licensee Coleco, Inc." Upon request, Licensee shall provide Licensor with samples

of all literature, advertising material, packaging material and labeling prepared by Licensee in connection with the sale of the Donkey Kong Electronic Table-top Game to enable Licensor to assure compliance with this Section. When using the trademark and copyrighted material licensed hereunder, Licensee undertakes to comply with all laws pertaining to trademarks and copyrights in force at any time in the Territory.

11. INDEMNITY. Licensor assumes no liabilities to the Licensee or third parties with respect to the performance characteristics of the Donkey Kong Electronic Table-top Game to be developed, manufactured and sold by Licensee under the terms of this Agreement. Licensee agrees to indemnify and hold Licensor harmless against losses incurred through claims of third persons against Licensor involving the manufacture or sale by Licensee of the Donkey Kong Electronic Table-top Game including, but not limited to , claims of product defect or breach of express or implied warranties.

12. OWNERSHIP OF TRADEMARK. Licensee acknowledges Licensor's exclusive right, title and interest in and to the trademark and copyrighted materials described herein and will not at any time do or cause to be done any act

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or thing contesting or in any way impairing or tending to impair any part of such right, title and interest. In connection with the use of the trademark and copyrighted material, Licensee shall not in any manner represent that it has any ownership in the trademark or copyrighted material. Licensee acknowledges that use of the trademark and copyrighted material shall not create in Licensee's favor any right, title or interest in or to the trademark or copyrighted material, but all uses of the trademark and copyrighted material by the Licensee shall inure to the benefit of the Licensor. Upon termination of this Agreement in the manner provided herein, the Licensee shall thereupon cease and desist from all further use of the trademark or copyrighted material in any way. Furthermore, the Licensee will not at any time adopt or use, without Licensor's prior written consent, any word or mark which is likely to be similar to or confusing with the trademark licensed herein.

13. INFRINGEMENT

(a) Licensor does not make any representations as to the scope or validity of the trademark or copyrighted materials referred to herein and does not warrant that the Donkey Kong Electronic Table-top Game which may be

manufactured and sold by Licensee hereunder will not infringe upon trademarks or copyrighted materials of others in any part of the Territory covered by this Agreement. The risk of such infringement is hereby assumed by Licensee to the extent it exercises its right to manufacture and sell the Donkey Kong Electronic Tabletop Game.

(b) In the event (1) any claim is asserted against either party hereto alleging that the trademark or copyrighted material described herein represents an infringement upon some other trademark or copyrighted material or (2) either party shall discover that Licensor's trademark and/or copyrighted material has been infringed upon by a third party, then the party with knowledge of such claim or infringement shall immediately notify the other party and both parties shall thereupon determine what steps shall be taken with respect to such claim or infringement.

(c) Each party shall have the right, but not the obligation, at its sole expense to commence and/or defend a legal action relating to such trademark or copyright infringement. Any recovery made as a result thereof shall inure to the benefit of the party commencing or

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defending such legal action.

14. NOTICES. Any notice required or permitted to be given under or in connection with this Agreement or the subejct matter hereof shall be deemed to have been sufficiently given when, if given to Licensee, it shall be addressed to: Michael S. Schwefel, Esq., Coleco Industries, Inc., 945 Asylum Avenue, Hartford, Connecticut 06105; and when, if given to Licensor, it shall be addressed to Manager of Right and Royalty, Nintendo Company, Ltd., 60 Fukuine Kamitakamatsu-cho, Higashiyama-ku, Kyoto, Japan, and Nintendo of America, 18340 Southcenter Parkway, Seattle, WA 98188, with a copy to Sax & MacIver, attention Howard C. Lincoln, 1700 Peoples National Bank Building, Seattle, Washington 98171; and in each case sent by registered airmail or certified airmail, postage prepaid. The date of receipt shall be deemed to be the date on which such notice or request has been given.

15. WAIVER/SEVERABILITY.

(a) The waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver by such party of any succeeding breach of the same or other

provision; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder be construed as a waiver of any such right, power or privilege by such party.

(b) If any term, clause or provisions of this Agreement shall be adjudged invalid, the validity of any other term, clause or provision shall not be affected; and such invalid term, clause or provision shall be deemed deleted from this Agreement.

16. GOVERNING LAW. This Agreement shall be governed by and construed, and any claim or controversy arising with respect thereto shall be determined in accordance with the laws of the State of Washington, U.S.A.

17. COMPLIANCE WITH LAW. Licensee shall at all times comply, at its own expense, with all applicable laws, regulations and orders of the United States of America and all states, instrumentalities or political subdivisions thereof relating to or in any way affecting this Agreement and the performance by Licensee or Licensor hereunder. Licensee shall, at its own expense, negotiate and obtain an approval, license or permit it may need in the performance

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of its obligations; shall declare, record or take such other steps as required to render, this Agreement binding.

18. ATTORNEYS FEES. In the event it is necessary for either party to this Agreement to employ an attorney to enforce the terms of this Agreement, to represent either party in an arbitration proceeding, or to file an action to enforce any of the terms, conditions or rights contained herein, or to defend any action, then the prevailing party in any such action shall be entitled to recover from the other all reasonable attorneys' fees, costs and expenses as may be fixed by any court or arbitrators.

19. ARBITRATION. All disputes and controversies of every kind and nature between the parties hereto arising out of or in connection with this Agreement as to the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuance or termination thereof shall be submitted to arbitration pursuant to the following procedure:

(a) Either party may demand such arbitration in writing within ten (10) days after the controversy

arises, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter in controversy.

(b) Within five (5) days after such demand, the other party shall name its arbitrator, or in default thereof, such arbitrator shall be named forthwith by the Arbitration Committee of the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within five (5) days or, in lieu of such agreement on a third arbitrator by the two arbitrators so appointed, a third arbitrator shall be appointed by the Arbitration Committee of the American Arbitration Association.

(c) Each party shall bear its own arbitration costs and expenses, except attorneys' fees to be awarded by the arbitrators pursuant to Section 18 of this Agreement.

(d) The arbitration hearing shall be held in Seattle, Washington, on ten (10) days notice to the parties, the arbitration rules and procedures of the American Arbitration Association shall be incorporated by reference therein and the law of evidence in the State of Washington shall govern the presentation of evidence therein.

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(e) The arbitration hearing shall be concluded within five (5) days unless otherwise ordered by the arbitrators and an award thereon shall be made within ten (10) days after the close of submission of evidence. An award rendered by a majority of the arbitrators appointed pursuant to this Agreement shall be final and binding on all parties to the proceeding during the period of this Agreement. A judgment on such award may be entered by either party in the highest court, state or federal, having jurisdiction over the parties.

(f) The parties stipulate that the provisions hereof shall be a complete defense to any suit, action or proceeding instituted in federal, state or local court or before any administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement and which is arbitrable as herein set forth. The arbitration provisions hereof shall, with respect to such controversy or dispute, survive the termination or expiration of this Agreement.

(g) Nothing herein contained shall be deemed to give the arbitrators any authority or power to alter, change or amend or modify any provision of this Agreement.

20. TERM AND TERMINATION.

(a) The word "termination" and cognate words such as "term" and "terminate" used in this Agreement are to be read, except where the contrary is specifically indicated, as omitting from their effect the following rights and obligations, all of which shall survive any termination to the degree necessary to permit their complete fulfillment or discharge:

1. Licensee's obligation to supply a terminal report in respect to terminated rights;

2. Licensor's right to receive or recover and Licensee's obligation to pay royalties accrued or accruable for payment at the time of any termination;

3. Licensee's obligation to maintain records and Licensor's right to conduct an audit as provided in Section 6(c);

4. Any cause of action or claim of either party, accrued or accruing, because of any breach or default by the other party.

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(b) Unless otherwise terminated as provided in Section 20, this Agreement shall remain effective for a period of five (5) years from the date of its execution. Licensee may renew this Agreement for one (1) additional year upon written notice delivered to Licensor on or before ninety (90) days from the date of expiration of the original term or any renewed period of this Agreement.

(c) Unless otherwise specified herein, neither Licensor nor Licensee shall default in the performance of any of the terms or provisions of this Agreement to be performed by it, and if such default shall not be cured within thirty (30) days after written notice of such default is given by the non-defaulting party to the defaulting party, then at any time after the expiration of such thirty (30) days, the non-defaulting party may give written notice to the defaulting party of its election to terminate this Agreement. Thereupon this Agreement shall terminate on the date specified in such notice, which shall not be less than fifteen (15) days following the receipt of such written notice. Such right of termination shall not be exclusive of any other remedies or means of redress to which the non-defaulting party may be lawfully entitled.

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(d) This Agreement shall terminate upon the filing of a voluntary petition in bankruptcy by Licensee, by Licensee's acquiescence to any involuntary bankruptcy petition or its adjudication as a bankrupt or upon the insolvency of Licensee.

(e) Unless otherwise provided for in this Agreement, Licensee agrees that upon termination of this Agreement it shall immediately discontinue use of the trademark "Donkey Kong" and the copyrighted material licensed herein. Licensee further agrees not to advertise directly or indirectly that Licensee formerly manufactured and sold the Donkey Kong Electronic Table-Top Game. Licensee further agrees to make to further reference to any trademakr of Licensor in connection with Licensee's business.

21. FORCE MAJEURE. Neither party shall be liable for any breach of this Agreement occasioned by any cause beyond the reasonable control of such party, which for purposes hereof shall include governmental action, war, riot or civil commotion, fire, floods, labor disputes, restraints affecting shipping or credit, delay of carriers, inadequate supply of suitable materials, or any other cause which could not with reasonable diligence be

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controlled or prevented by the parties, provided, that in the event Licensee shall fail to manufacture and sell the Donkey Kong Electronic Table-top Game for any period of six (6) months during the term of this Agreement, then Licensor may terminate this Agreement on thirty (30) days written notice.

22. DISPOSAL OF INVENTORY. Upon the expiration and/or termination of this Agreement, Licensee shall immediately provide Licensor with a true itemized statement of all unsold Donkey Kong Electronic Tbale-top Games on hand and/or in the process of manufacture at the time of such expiration or termination. Within ten (10) days after receipt thereof, Licensor may notify Licensee that it desires to purchase from Licensee any or all of the unsold Donkey Kong Electronic Table-top Games on hand or in the process of manufacture at the Licensee's actual cost (material and labor cost) only.

In the event the Licensor shall not exercise its right to purchase any of said Donkey Kong Electronic Table-top Games, then in such event Licensor agrees that at the termination of this Agreement, other than the default by Licensee, the Licensee shall have, for a period of not more than ninety (90) days following such termination,

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the right to dispose of all of the unsold Donkey Kong Electronic Table-top Games not purchased by Licensor which were completed prior to such termination; provided, however, that the same were in the process of manufacture more than sixty (60) days before said termination; provided, however, that Licensee shall not dispose of said unsold Donkey Kong Electronic Table-top Games or any part thereof until fifteen (15) days after it has given Licensor a true itemized statement of all such unsold Donkey Kong Electronic Table-top Games and sufficiently detailed manufacturing information to substantiate applicability of this Section to said games. Licensee shall in accordance with the provisions of this Agreement furnish Licensor with statements with respect to all sales pursuant to the provisions of this Section and shall pay Licensor royalties on all such sales (other than sales to Licensor) in accordance with the provisions of this Agreement. Except as otherwise provided herein, if this Agreement is lawfully terminated by Licensor as a result of any breach of any of its terms and conditions by Licensee, Licensee shall cease and desist from any further manufacture or sale of the Donkey Kong Electronic Table-top Game.

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23. OFFICIAL TEXT. This Agreement may be translated into Japanese for the convenience of the parties, but this English language version is the true and binding agreement between the parties, and in the case of any difference between this version and the translation or modification hereof this version shall prevail.

EXECUTED this 1st day of February, 1982.

NINTENDO COMPANY, LTD.

By Hiroshi Yamauchi
H. Yamauchi, President

NINTENDO OF AMERICA, INC.

By
Its PRESIDENT

COLECO INDUSTRIES, INC.

By Eric Bromley 2/1/82
Its VICE PRESIDENT

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